

#### § 405.356

would defeat the purpose of title II or title XVIII of the Act or would be against equity and good conscience. (See 20 CFR 404.509 and 404.512.)

(b) Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as may be determined to be inconsistent with the purposes of Title XVIII of the Act) against an individual who is without fault shall be deemed to be against equity and good conscience if the determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual. (See §§ 405.330–405.332 for conditions under which payment may be made for items or services furnished after October 30, 1972 which are noncovered by reasons of § 405.310 (g) and (k).)

[41 FR 1493, Jan. 8, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977]

#### § 405.356 Principles applied in waiver of adjustment or recovery.

The principles applied in determining waiver of adjustment or recovery (§ 405.355) are the applicable principles of § 405.358 and 20 CFR 404.507–404.509, 404.510a, and 404.512.

[61 FR 49271, Sept. 19, 1996]

EFFECTIVE DATE NOTE: At 61 FR 49271, Sept. 19, 1996, § 405.356 was revised, effective Oct. 21, 1996. For the convenience of the user the superseded text is set forth as follows:

#### § 405.356 Principles applied in waiver of adjustment or recovery.

The principles applied in determining waiver of adjustment or recovery (§ 405.355) are the applicable principles of 20 CFR 404.506–404.509, 404.510a, and 404.512.

[35 FR 6321, Apr. 18, 1970. Redesignated at 42 FR 52826, Sept. 30, 1977]

#### § 405.357 Notice of right to waiver consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, notice of the provisions of section 1870(c) of the Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or recovery of the overpayment is to be effected (see § 405.358).

[61 FR 49271, Sept. 19, 1996]

#### 42 CFR Ch. IV (10–1–96 Edition)

EFFECTIVE DATE NOTE: At 61 FR 49271, Sept. 19, 1996, § 405.357 was added, effective Oct. 21, 1996.

#### § 405.358 When waiver of adjustment or recovery may be applied.

Section 1870(c) of the Act provides that there shall be no adjustment or recovery in any case where an incorrect payment under title XVIII (hospital and supplementary medical insurance benefits) has been made (including a payment under section 1814(e) of the Act with respect to an individual:

(a) Who is without fault, and

(b) Adjustment or recovery would either:

(1) Defeat the purposes of title II or title XVIII of the Act, or

(2) Be against equity and good conscience.

[61 FR 49271, Sept. 19, 1996]

EFFECTIVE DATE NOTE: At 61 FR 49271, Sept. 19, 1996, § 405.358 was added, effective Oct. 21, 1996.

#### § 405.359 Liability of certifying or disbursing officer.

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person:

(a) Where the adjustment or recovery of such amount is waived (see § 405.355), or

(b) Where adjustment (see § 405.352) or recovery is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

#### SUSPENSION OF PAYMENT TO PROVIDERS AND SUPPLIERS AND COLLECTION AND COMPROMISE OF OVERPAYMENTS

#### § 405.370 Suspension of Medicare payments to providers and suppliers.

(a) Medicare payments to providers and suppliers, as authorized under this chapter (excluding payments to beneficiaries), may be suspended, in whole or in part, by an intermediary or a carrier when—

(1) The intermediary or carrier has determined that the provider or other supplier to whom such payments are to be made has been overpaid under title XVIII of the Social Security Act, or

(2) The intermediary or carrier has reliable evidence, although additional

evidence may be needed for a determination, that such overpayment exists or that the payments to be made may not be correct.

(b) A suspension shall be put into effect only after the provisions in §§ 405.371 and 405.372 have been complied with and the intermediary or carrier has determined that the suspension of payments, in whole or in part, is needed to protect the program against financial loss. The provisions of this section and §§ 405.371–405.373 shall be effective on May 27, 1972.

[37 FR 10723, May 27, 1972. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 51 FR 41351, Nov. 14, 1986; 53 FR 6647, Mar. 2, 1988]

#### **§ 405.371 Proceeding for suspension.**

(a) *General.* Whenever the intermediary or carrier has determined that a suspension of payments under § 405.370 should be put into effect with respect to a provider of services or other supplier of services, the intermediary or carrier shall notify the provider or other supplier of its intention to suspend payments, in whole or in part, and the reasons for making such suspension. The provider or other supplier will be given the opportunity to submit any statement (including any pertinent evidence) as to why the suspension shall not be put into effect and shall have 15 days following the date of notification to submit such statement, unless the intermediary or carrier for good cause imposes a shorter period. The intermediary or carrier may, for good cause shown, extend the time within which the statement may be submitted. If no statement is received within the 15-day period or such other period as specified in the notice, the suspension shall go into effect.

(b) *Fraud or misrepresentation.* The provisions of paragraph (a) of this section shall not apply where the intermediary or carrier has reliable evidence that the circumstances giving rise to the need for a suspension of payments involves fraud or willful misrepresentation. Instead, the intermediary or carrier may suspend payments without first notifying the provider or other supplier of an intention to suspend payments. The provider or other supplier will be notified of

such suspension and the reasons for taking such action.

(c) *Notice of amount of program reimbursement.* The provisions of paragraph (a) of this section shall not apply where the intermediary, after furnishing a provider a written notice of the amount of program reimbursement pursuant to § 405.1803, suspends payment under paragraph (b) of such § 405.1803.

(d) *Failure to furnish information requested.* The provisions of paragraph (a) of this section shall not apply where the intermediary or carrier suspends payments to a provider or other supplier of services because such provider or supplier of services has failed to submit evidence requested by such intermediary or carrier which is needed to determine the amounts due such provider or supplier under the program (sections 1815 and 1833(e) of the Act).

[37 FR 10723, May 27, 1972, as amended at 41 FR 52050, Nov. 26, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977]

#### **§ 405.372 Submission of evidence and notification of administrative determination to suspend.**

When pursuant to § 405.371(a) the provider or other supplier submits a statement, the intermediary or carrier shall consider such statement (including any pertinent evidence submitted), together with any other material bearing upon the case, and make a determination as to whether the facts justify a suspension authorized by § 405.373. If the intermediary or carrier determines that a suspension should go into effect, written notice of such determination will be sent to the provider or other supplier. Such notice will contain specific findings on the conditions upon which the suspension was based, and an explanatory statement for the final decision.

[37 FR 10723, May 27, 1972. Redesignated at 42 FR 52826, Sept. 30, 1977]

#### **§ 405.373 Subsequent action by intermediary or carrier.**

(a) Where a suspension is put into effect by reason of § 405.370(a)(1), such suspension shall remain in effect until whichever of the following first occurs:

(1) The overpayment is liquidated, (2) the intermediary or carrier enters into